

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition Nos.: 32-012-06-1-4-00115
32-012-06-1-4-00116
32-012-06-1-4-00117
Petitioner: Hubler Realty Company
Respondent: Hendricks County Assessor
Parcel Nos.: 21-1-25-51E-197-001
21-1-25-51E-195-002
21-1-25-51E-195-001
Assessment Year: 2006

The Indiana Board of Tax Review (the Board) issues this determination in the above matters, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated assessment appeals with the Hendricks County Property Tax Assessment Board of Appeals (the PTABOA) by written documents on May 15, 2007.
2. The PTABOA issued notices of its decision on January 4, 2008.
3. The Petitioner filed Form 131 petitions with the Board on February 13, 2008. The Petitioner elected to have its case heard according to the Board's small claim procedures.
4. The Board issued notices of hearing to the parties dated July 27, 2009.
5. The Board held an administrative hearing on September 17, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Milo E. Smith, Taxpayer Representative
 - b. For Respondent:¹ Gail L. Brown, Hendricks County Assessor
Lester E. Need, PTABOA Member

¹ Mr. Gene Ploughe was also in attendance for the Respondent but was not sworn in as a witness to give testimony.

Gordon McIntyre, PTABOA Member
Ronald L. Faulkner, PTABOA Member
Allen Parsons, PTABOA Member

Facts

7. The properties under appeal consist of Parcel No. 21-1-25-51E-197-001, a 1.02 acre lot developed with a 5,075 square foot commercial garage (the garage parcel); Parcel No. 21-1-25-51E-195-002, a .46 acre lot of undeveloped land (the undeveloped land); and Parcel No. 21-1-25-51E-195-001, a 2.5022 acre lot developed with 11,520 square foot auto service building (the auto service parcel) (together the three parcels are referred to as the subject property) located at 2170 East Main Street, Plainfield, Guilford Township, in Hendricks County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. The PTABOA determined the assessed values of the properties to be \$413,100 for the land and \$40,400 for the improvements, for a total assessed value of \$453,500 for the garage parcel; \$154,300 for land for the undeveloped land; and \$825,700 for the land and \$119,500 for the improvements, for a total assessed value of \$945,200 for the auto service parcel.
10. The Petitioner requested an assessed value of \$398,750 for the garage parcel; \$137,500 for the undeveloped land; and \$838,750 for the auto service parcel, for a total assessed value of \$1,375,000.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in its assessment:
 - a. The Petitioner's representative argues that the three parcels under appeal were purchased as a single site and therefore the parcels should be valued as a single property. *Smith testimony*.
 - b. Mr. Smith argues that the 2002 Real Property Assessment Manual (Manual) states that taxpayers are permitted to offer evidence, such as an appraisal, to show the assessed value of a property does not reflect its market value-in-use. *Petitioner Exhibit 3; Smith testimony*. According to Mr. Smith, the Petitioner's property is over-assessed based on its appraised value of \$1,375,000. *Smith argument*. In support of its position, the Petitioner submitted an appraisal report prepared by Mr. Stephen W. Cobb and Mr. Stephen L. Cobb of RPE/Cobb & Associates. *Petitioner Exhibit 1*. Mr. Stephen W. Cobb and Mr. Stephen L. Cobb are Indiana Certified General Appraisers. *Id.* In their appraisal report, the Cobbs used the

sales comparison method of valuation to estimate the property's value to be \$1,375,000 as of October 6, 2004. *Id.*

- c. Moreover, Mr. Smith apportioned the appraised value of the Petitioner's property between the three individual parcels. *Smith testimony.* According to Mr. Smith, the county is currently assessing the parcels together for \$1,553,000, which breaks down to 29% for the garage parcel, 10% for the undeveloped land, and 61% for the auto service parcel. *Petitioner Exhibits 4-6; Smith testimony.* Mr. Smith testified that when the same percentages are applied to the property's \$1,375,000 appraised value, the assessed values of the three parcels are \$398,750 for the garage parcel, \$137,500 for the undeveloped land and \$838,750 for the auto service parcel. *Smith testimony.*
 - d. In his rebuttal argument, Mr. Smith contends that the Board should disregard the property's sale because annual adjustments should not be based on individual sales prices. *Smith argument.*
12. Summary of the Respondent's contentions in support of the assessment:
- a. The Respondent contends the assessed values of the properties under appeal are fair based on the Petitioner's \$2,000,000 purchase of the property on June 2, 2005. *Need argument.* Mr. Need argues that pursuant to 50 IAC 21-3-3, assessing officials "use sales of properties occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the March 1, 2006, assessment date." *Need testimony.*
 - b. Mr. Need testified that the Petitioner claimed at the PTABOA hearing that the \$2,000,000 purchase price included a franchise fee. *Respondent Exhibit 7; Need testimony.* Mr. Need argues, however, that the sales disclosure form filed by the buyer and seller at the time of the sale, and signed by both parties under penalties of perjury, did not indicate there were any conditions, items or special circumstances relating to the sale. *Respondent Exhibits 2 and 7; Need testimony.* Mr. Need testified that for 2006 the county assessed the subject property for \$1,552,900, which is 77.7% of the purchase price. *Respondent Exhibit 6; Need testimony.* Thus, to the extent that any franchise fee was included in the sale price, Mr. Need argues, the county allowed \$447,100. *Id.*
 - c. Finally, Mr. Need argues that the Board should give little weight to the Petitioner's appraisal because it was a limited, restricted use appraisal. *Need argument.*

Record

13. The official record for this matter is made up of the following:

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:²

Petitioner Exhibit 1 – Limited Appraisal Restricted Use Report, prepared by RPE/Cobb & Associates, dated October 6, 2004,

Petitioner Exhibit 3 – Page 6 of the 2002 REAL PROPERTY ASSESSMENT MANUAL,

Petitioner Exhibit 4 – Property record card for the garage parcel,

Petitioner Exhibit 5 – Property record card for the undeveloped land,

Petitioner Exhibit 6 – Property record card for the auto service parcel,

Respondent Exhibit 1 – An aerial map of the subject property,

Respondent Exhibit 2 – Sales Disclosure Form from Thomas C. and Bette L. Costin to Hubler Realty Company, dated June 2, 2005,

Respondent Exhibit 3 – Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130 for the garage parcel,

Respondent Exhibit 4 – Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130 for the undeveloped land,

Respondent Exhibit 5 – Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130 for the auto service parcel,

Respondent Exhibit 6 – Hendricks County PTABOA's Actions / Determinations sheet,

Respondent Exhibit 7 – Slideshow presentation on the "Hendricks County Assessor's Position Concerning the State Appeal",

Board Exhibit A – The Form 131 petitions with attachments,

Board Exhibit B – Notices of Hearing,

Board Exhibit C – The Hearing sign-in sheet.

- d. These Findings and Conclusions.

² The Petitioner did not submit its Exhibit 2.

Analysis

14. The most applicable governing cases are:
 - a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.; Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner raised a prima facie case that its property was over-valued. The Respondent rebutted that evidence. The Board reached this decision for the following reasons:
 - a. The 2002 Real Property Assessment Manual defines “true tax value,” as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, for the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's market value: the cost approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
 - b. A property's market value in use as determined using the Guidelines is presumed to be accurate. *See MANUAL* at 5; *Kooshtard Property, VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer, however, may rebut that assumption with evidence that is consistent with the Manual's definition of true tax value. *MANUAL* at 5. A market value-in-use appraisal

prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *See Id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.

- c. Regardless of the method used, the 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of that valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- d. Here, the Petitioner presented an appraisal, prepared by RPE/Cobb & Associates that estimated the value of the property to be \$1,375,000 as of October 6, 2004. *Petitioner Exhibit 1*. The appraisers are Indiana Certified Appraisers that prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* While generally the 2006 assessment is to reflect the value of the property as of January 1, 2005, pursuant to 50 IAC 21-3-3 (a), local assessing officials "shall use sales of properties occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the March 1, 2006, assessment date." Thus, an appraisal valuing the property as of October 6, 2004, must also have some probative value. The Board therefore finds that the Petitioner raised a prima facie case that the property is over-assessed. *See Meridian Towers*, 805 N.E.2d at 479.
- e. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- f. The Respondent argues the Board should give little weight to the Petitioner's appraisal because the Petitioner purchased the property for substantially more than the appraised value within six months of the statutory valuation date. *Respondent Exhibit 2; Need testimony*. According to the Respondent's witness, the Petitioner paid \$2,000,000 on June 2, 2005, for the three parcels under appeal. *Id.* While Mr. Need testified that the Petitioner's representative argued at the PTABOA hearing that the purchase price included franchise fees, the Petitioner's representative made no such argument before the Board here. Mr. Smith merely argued that the Board should disregard the sales price of the property because annual adjustments, in his opinion, should not be based on an individual sale. Further, the sales disclosure form – signed by the buyer and seller under penalties

of perjury – did not indicate any special conditions or circumstances were included in the purchase price. *Respondent Exhibit 2*. Thus, there is no evidence before the Board that the Petitioner’s purchase of the property was anything other than an arms-length transaction representing the market value of the property. Therefore, the Respondent presented sufficient evidence to rebut the Petitioner’s appraisal.

- g. The price paid for a property and an appraisal are both acceptable alternative approaches to determining a property’s market value-in-use. Further, both the appraisal’s valuation date and the purchase of the property occurred sufficiently contemporaneously with the statutory valuation date to be probative. The Board must, therefore, weigh the evidence presented by both parties and determine the most persuasive evidence of the property’s value.
- h. The Indiana Tax Court has often said that “the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).” *See generally Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). The Tax Court, however, has not addressed the situation where a party has submitted evidence of the actual sale of the property that occurred within the relevant valuation date that rebuts the appraised value.
- i. An appraisal represents an estimate of a property’s value based on the opinion of an appraiser. The purchase price of a property is not an estimate, but rather is direct evidence of how a buyer and seller valued the utility of the property. The Board therefore finds that the actual sale of a property, as opposed to a property’s appraised value, is the better evidence of a property’s value when both the sale and the appraisal are sufficiently related to an assessment’s valuation date to be probative.
- j. Here, the Petitioner’s representative failed to present any evidence that the Petitioner’s purchase of the property was anything other than a market transaction or that the purchase price reflected more than just the sale of the subject property. Thus, the Board holds the property’s sale price is more persuasive of its value and finds in favor of the Respondent.

Conclusion

- 16. The Petitioner raised a prima facie case. The Respondent rebutted that evidence. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessments should not be changed.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5 as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE0287.1.html>.